



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/170436

PRELIMINARY RECITALS

Pursuant to a petition filed December 02, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 07, 2016, at Chilton, Wisconsin.

The issue for determination is whether the agency correctly ended the Petitioner's benefits effective December 1, 2015.

NOTE: The record was held open until the end of the day on January 7, 2016, to obtain Petitioner's tax documents. The agency submitted a 2014 Schedule F, a 2014 schedule 1065, a 2014 schedule K-1, and self-employment screen printouts. The packet has been marked as Exhibit 8 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Economic Support Manager
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.

2. On November 18, 2015, the agency sent the Petitioner a notice advising her that her FoodShare benefits would be ending effective December 1, 2015, because her household was over the program limit. (Exhibit 3)
3. On December 1, 2015, the agency sent the Petitioner another notice advising her that she was over the income limit for FoodShare benefits. (Exhibit 4)
4. Also on December 1, 2015, the Petitioner filed a request for fair hearing with the Division of Hearings and Appeals. (Exhibit 1)
5. The Petitioner has a household of five people. There is no claim and no evidence that anyone in the household is over age 60 or receiving SSDI. (Exhibits 3 and 4)
6. Petitioner pays a mortgage of \$700 per month for her home. (Exhibits 3 and 4)
7. Petitioner/her husband are self-employed in a [REDACTED] business and a [REDACTED] business. (Testimony of Petitioner; Exhibit 8)
8. Petitioner's 19 year-old daughter earns income from a temp agency, working 40 hours per week, at \$11.66 per hour. She is paid weekly. Thus, her monthly income works out to be as follows:

$$40 \text{ hours} \times \$11.66 \text{ per hour} \times 4.3 \text{ average weeks per month} = \$2005.52 \text{ per month}$$

(Exhibit 6)

DISCUSSION

To receive FoodShare benefits a household must meet gross and net income limits.¹ *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The gross income limit is 200% of the Federal Poverty Limit (FPL), which for a household of five is \$4,736.00 per month. The net income limit is generally 100% of FPL, which for a household of 5 is \$2368.00 per month. *FSH §8.1.1*

The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

In the case at hand, the Petitioner did not contest the information in her daughter's income verification form, which indicated that she works 40 hours per week at \$11.66 an hour. Thus, her monthly income works out to be as follows:

$$40 \text{ hours} \times \$11.66 \text{ per hour} \times 4.3 \text{ average weeks per month} = \$2005.52 \text{ per month}$$

Petitioner stated some objection to including her daughter's income. However, earned income of a child is only disregarded when that child is 17 years or younger and is under parental control of an adult food unit member, and is enrolled in an elementary, high school, technical school, or university. *FSH §4.3.2.2* Such income is disregarded until the month, following the month in which the child turns 18 years of age. *Id.* Petitioner testified that her daughter is 19 years old. As such, the agency correctly counted her income when calculation the Petitioner's household income.

Petitioner also disputed the agency's calculation of her self-employment income, in particular the agency's treatment of depreciation. The Petitioner argued that she could not sell a cow or equipment to buy food, because they are essential to running her [REDACTED]. However, depreciation is not allowed as a deduction from income, because it is often times, not an actual out-of-pocket cash expenditure; it is the estimated

¹ Households that include an elderly (over age 60), blind, or disabled individual do not have a gross income limit, but must have income that does not exceed 100% FPL and countable assets that do not exceed \$3250. *FSH §1.1.4*

devaluation of an asset/property over time. When the business ends and the property/asset is sold, the money received is counted as an asset, not income. *See FSH§4.3.3.3*

Per *FSH §4.3.3.5.3*, “To calculate self-employment income, use the self-employment income worksheets to adjust the income figure on the IRS tax forms. The worksheets identify net income and depreciation. Add back in depreciation on the IRS form as indicated on the worksheet.”

Depreciation is also specifically listed as a disallowed expense:

Disallowed Expenses

Some specific expenses that are not allowed in the calculation of Self Employment Income for FoodShare are:

1. Depreciation
2. Net loss carryover from previous periods (long term capital loss)
3. Federal, State, and local income taxes
4. Charitable donations
5. Work-related personal expenses, such as transportation to and from work
6. Employer work-related personal expenses such as pensions, employee benefit and retirement programs and/or profit sharing expenses (Business expenses for employees’ pensions, benefits, retirement programs, and profit sharing expenses are allowable, but the work-related personal expenses of the employer are not).
7. Amortization and depletion
8. Guaranteed payments to partners

FSH §4.3.3.5.3

Thus, the agency correctly added back in the depreciation when calculating Petitioner’s self-employment income.

With regard to the [REDACTED] income, the Petitioner’s schedule F showed a net loss of \$109,979. The schedule F shows depreciation of \$186,318. Adding back in the depreciation we have the following:

-\$109,979 Loss
+\$186,318 Depreciation
\$76,339 annual income

It is undisputed that the business was in existence for 12 months that year, so monthly income works out to be:

$\$76,339 \text{ annual income} \div 12 \text{ months} = \$6361.58 \text{ monthly [REDACTED] income}$

With regard to the [REDACTED] partnership, the schedule 1065 shows total business income of \$64,884. The schedule 1065 shows depreciation of \$8767. Adding back in the depreciation we have:

\$64,884 ordinary business income
+\$8767 depreciation
\$73,651 annual income

It is undisputed that the business was in existence for 12 months that year, so monthly income works out to be:

$$\$73,651 \div 12 \text{ months} = \$6137.58 \text{ monthly income.}$$

Petitioner's husband is a 50% owner of the business, so his share of the income is:

$$\$6137.58 \div 2 = \$3068.79 \text{ monthly income.}$$

Adding together all of Petitioner's household income we have:

\$2005.52	daughter's earned income
+\$6361.58	income
+\$3068.79	income
<hr/>	
\$11,435.89	monthly income

The gross income limit is 200% of the Federal Poverty Limit (FPL), which for a household of five is \$4,736.00 per month. Petitioner's household income of \$11,435.89 exceeds the \$4,736.00 200% FPL income limit. As such, the agency correctly ended Petitioner's benefits.

It should be noted that the agency under budgeted the income of Petitioner's daughter, but even allowing for the agency's lower income calculation, Petitioner is still over the income limit (See Exhibit 7):

\$1002.76	daughter's earned income (miscalculated amount)
+\$6361.58	income
+\$3068.79	income
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\$10,433.13	monthly income

The Petitioner argued that it is not fair to include the income, because her husband never actually sees any money from the business and only gets the use of the business's trucks. However, there is no documentation, such as a contract, to support this contention and the tax forms say otherwise.

CONCLUSIONS OF LAW

The Petitioner is over the income limit; thus the agency correctly ended the Petitioner's FoodShare benefits, effective December 1, 2015.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

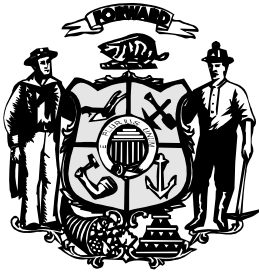
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of January, 2016.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 19, 2016.

Calumet County Department of Human Services
Division of Health Care Access and Accountability